

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1297	Press ~~Mis.~~
9-10	
Dated 23-9-1918	

Not to be folded or roughly handled

No. 9. Read the following letter from Lieut. Colonel W. G. WOODS, Adjutant General of the Army; to the Secretary to Government, Military Department, dated Ootacamund, 28th August 1858, No. 1699.

SIR,

I have the honor by order of the Commander-in Chief to forward for submission to the Right Honorable the Governor in Council, the documents as per margin, connected with the case of Boodoo Bee, widow and nominated heir of the late Subadar Khaja Emaum Shurreeffe of the 2nd Regiment N. I., who died at sea when returning from foreign service in 1845.

Petition of Boodoo Bee, widow of the late Subadar Khaja Emaum Shurreeffe, 2nd Regt. N. I., and nominated heir to pension
Letter from the Officer Commanding Palamcottah, dated 28th July 1858, No. 309, with two enclosures
Translations in English of the Decrees of the Civil Courts.
Copy of Proceedings of Committee held at Palaveram on the 15th December 1845, to investigate the claim of Boodoo Bee, to pension

Boodoo Bee appeared before a Committee in December 1845, and was pronounced to be entitled to a pension as the shadee wife and nominated heir of her late husband. The pension was confirmed by Government and she continued to draw it without interference until the beginning of 1857, when an action was raised against her by the nickah widow of her late husband claiming 24 Rupees due to her as a share of the pension granted to Boodoo Bee.

Claim No. 1.
Minutes Consultation, 21st
January 1846, No. 321.

In order to understand more clearly the steps taken in this case, the Commander-in-Chief has instructed me to recapitulate some of the regulations and orders of Government which appear to have been set at defiance by the Civil Courts. The Pension Regulations say, "that a Native Officer or Soldier shall nominate the heir to pension and that the name of the heir so nominated must be entered at the time of the nomination." It is also ordered, "that the full amount of pension is to be paid to the *nominated heirs only, and that the distribution of it is to be provided for solely by family arrangement.*"

The nominated heir in this case was Boodoo Bee; she has always been the recipient of the pension, and it is suggested with every respect for the Judicial authorities that the Moonsiff of Nelleyambalum Talook in the first instance, and Mr. Story the Appeal Judge of Tinnevely in the second, had not in this case any authority; for Regulation IV of 1831 shuts the door and in the clearest terms too against any such suits as the present one.

The Commander-in-Chief cannot but observe the curious reasoning of the Moonsiff, who states, "It has been proved by witnesses examined in favor of plaintiff, that in 1842 she was married by nickah to the deceased Subadar."

"It has been proved by the 1st and 2nd witnesses that the plaintiff and defendant lived together 10 months prior to this."

"It has been proved by the 1st and 2nd witnesses in favor of the plaintiff, that a pension of 21 Rupees a month, was granted by Government for the maintenance of both parties, which amount was received by the defendant."

"Wherefore it is decreed that the defendant should, besides paying the plaintiff the amount of 24 Rupees claimed with the accumulated arrears at the rate of 10½ Rupees a month with Court costs, that she continue to pay 10½ Rupees monthly from the pension she receives from Government throughout the life time of the plaintiff."

The whole amount was 115 Rupees, 10 Annas and 9 Pice, in which Boodoo Bee was cast. The Appeal Judge Mr. Story, reviews this decision as follows:—

"The original defendant not having brought forward any thing to prove the claim to be false, the fact of the plaintiff's having in 1842 been married by nickah to the deceased Subadar Khaja Emaum Shurreeffe has not been disproved. That after his death they both lived together and enjoyed conjointly the pension of Rupees 21 has been proved by the witnesses of the plaintiff in the 2nd Regiment. It is evident as is stated by the plaintiff, that her late husband on his proceeding on foreign service to China granted from a fixed amount of Rupees 35, two separate family certificates at Rupees 21 and 14, the former for the maintenance of his first wife the defendant, and the latter for the second wife the plaintiff, consequently the Court have, under

Fort St. George, Judicial Consultation, 28th September 1858.

the tenor of the aforesaid distribution of the family payment awarded, that two-fifths of the pension Rupees 21 or Rupees 8-6 5 be paid to plaintiff throughout her life time."

Government will observe, that both Decrees declare that Boodoo Bee shall pay a pension to the nickah widow throughout the life time of the nickah widow. To show that the nickah widow is not entitled to any such award would be sufficiently proved by the fact that the pension altogether ceases with the life of Boodoo Bee.

It will also be observed, that neither the Native Judge nor the Appeal Judge took any notice of the regulations and orders of Government; it is true the Native Judge calls two witnesses, who state that the Government intended the pension for the maintenance of both parties; but it is not shewn where the witnesses got this information and the act of the Government disproves its correctness. The Appeal Judge takes another position which is quite untenable. He decrees that besides paying the amount claimed, and the amount accumulated, and the costs in the suit in the lower Court, and the costs in the suit on Appeal, she shall pay from the pension two-fifths to the nickah widow because as he says the Subadar during his life time allowed the nickah wife a family certificate of 14 Rupees, when he granted one for 21 Rupees to his shadee wife Boodoo Bee.

It is scarcely possible that the Government can sanction this way of dealing with their own regulations and orders. The Government declares that the *nominated heirs only* shall draw the pension, and that there shall not be any interference except by family arrangement in the distribution of it; and His Excellency, without adopting the expression of the Officer Commanding Palamcottah that the proceedings are illegal, considers it at any rate doubtful if they are authorized or intended to be authorized by the regulations and orders of Government.

His Excellency considers that in the event of the proceeding in the Civil Courts being eventually set aside, some effectual measures should be adopted to secure a restitution of any money paid by Boodoo Bee in this case, where, if her own statement can be depended upon, she, a ghosha female and the widow of a Native Officer, has been subjected to the degradation of confinement in Jail.

Referred to the Judicial Department.

Fort Saint George, }
3rd September 1858. }

(Signed) W. H. WAPSHARE, Major,
Acting Dy. Secy. to Govt.

To the Adjutant General of the Army, Ootacamund.

The humble Petition of Boodoo Bee, widow of
the late Subadar Khaja Emom Sherriff, 2nd
Regiment N. I., and nominated heir to pension.

HUMBLY SHEWETH,

That petitioner has ever since the appearance of her name in General Orders in 1845, Pension Ticket, No. 1229, drawn her stipend monthly from the several Officers in charge of Pensions of the places where she hitherto resided without dispute or hinderance till a few months ago when a female (this female was a second or nicka wife of her husband) laid a claim to a portion of her allowance; previous to her husband's death he requested that should he die, a sum of Rupees 200 should be paid to her the 2nd or nicka wife, and she to have no demands on any share of the Government Pension; this request was attended to by the Officer Commanding 2nd Regiment N. I.; lately this person without making any complaint to the Officer in charge of Pensions, or to the Officer Commanding the station, proceeded to the Collector and filed a complaint against petitioner demanding a portion of her pension and on her refusing to concede to this demand she has been placed in Jail. Petitioner knows not if the Collector or Judge is aware of these proceedings, but as she is a gosha, she thinks that some person has exceeded his or their authority, and as she has no other way in redressing her grievances, being surrounded by Peons and others, who are threatening her with many things to induce her to grant these demands, she adopts this method in the hope as she is the widow of an old and faithful Native Officer, that the Adjutant General of the Army will kindly see her redressed, and for which act as in duty bound she will ever pray.

The mark of + BOODOO BEE.

Palamcottah, 21st June 1858.

Fort St. George, Judicial Consultation, 28th September 1858.

From Major E. ARMSTRONG, Commanding Palamcottah; to the Deputy Adjutant General of the Army, Fort Saint George, dated 28th July 1858 No. 309.

SIR,

No. 619
Forwards a petition from
Boodoo Bee, and directs a
report thereon in commu-
nication with the Collector
of Trichinopoly to be made.

I have the honor to acknowledge the receipt of your Memorandum No. and subject as per margin, and to forward copy of the reply from the Judge of Tinnevely.

Pensioned heir Boodoo Bee, No. 1229 of the Pension Establishment, further states that the Civil authorities have passed a Decree to pay out of her pension Rupees 8-6-5 per month to one Shaw Bee, nicka wife of her late husband and produced 2 copies of this Decree, which I have the honor to forward considering it illegal that her pension be touched. She prays that this Decree may be reversed.

From E. STORY, Esq., Sessions Judge; to Lieutenant Colonel J. M. MADDEN, Commanding Palamcottah, dated Tinnevely, 15th July 1858, No. 649.

SIR,

* Herewith returned With reference to your letter of the 8th Instant, No. 375, with its enclosure* (purporting to be a petition to the Adjutant General from one Boodoo Bee), I beg to observe, that as petitioner states that a complaint was lodged against her to the Collector, the information called for should be obtained from that Officer; and as regards the alleged confinement in the Jail, that no such person, is or has been under confinement in the Jail under my charge.

(True Copy.)

(Signed) E. ARMSTRONG,
Commanding Palamcottah.

TRANSLATION FROM TAMIL.

Moonsiff's Court of Nelliambalam Talook, attached to the Zillah Court of Tinnevely,
No. 111 of 1857.

Plaintiff.

Defendant.

Shah Beebee, resident of Palamcottah of the Talook of Tinnevely.

Boodoo Beebee, resident in the above line.

Both parties having been wives of Khaja Imam Sherif, who performed the duty of Subadar in a Battalion. A pension at the rate of 21 Rupees a month having been granted by Government in the name of the defendant for the maintenance of both parties, which accruing up to October 1856, both parties received and spent their time living conjointly, afterwards on account of disagreement between the parties, the plaintiff having separated herself, and the defendant receiving the above 21 Rupees from Government, the plaintiff claims half of the above pay, at the rate of Rupees 10-8, (126 Rupees per annum) for food and raiment to the end of her existence, together with Rupees 24 stated to be due to the plaintiff.

2 Exparte decision made in favor of defendant.

3 Points to the complainant.

1. The plaintiff is required to prove the fact of both parties having been the wives of the late Subadar Kaja Imam Sherif Saib.
2. Their enjoyment conjointly up to October 1856 of the pension of Rupees 21 a month granted for their maintenance on the death of the Subadar.
3. The receipt from Government by the defendant of the pension of Rupees 21 a month.
4. No record has been made in favor of plaintiff.
5. Witnesses examined in favor of plaintiff.

- | | | |
|--------------------------|---|--|
| 1. Rungasamy Naiker..... | 1 | } These witnesses to prove the 1st, 2nd and 3rd points on behalf of the plaintiff. |
| 2. Kalif Beebee. | 1 | |
| 3. Dawood Khan | 1 | |

Total..... 3 Persons.

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Decision.

6. It has been proved by witnesses examined in favor of plaintiff, that in 1842 she was married by nikah to the deceased Subadar Kaja Imam Sherif.

7. It has been proved by the first and second witnesses examined in favor of plaintiff, that both parties lived together, ten months prior to this.

8. It has been proved by the first and second witnesses in favor of plaintiff, that a pension of Rupees 21 a month was granted by Government for the maintenance of both parties, which amount was received by the defendant (*alone understood.*)

9. Wherefore it has been decreed that the defendant should, besides paying plaintiff from February to the present date the claimed amount of Rupees 24, together with the accumulated arrears at the rate of Rupees 10½ a month with Court costs, that she continue to pay Rupees 10½ monthly from the pension she receives from Government throughout the life time of the plaintiff.

Amount claimed in the complaint.....	24	0	0
Amount accumulated subsequent to preferring complaint..	113	9	0

Total... 137 9 0

Cost of Plaintiff.			
Charge of stamped paper	8	0	0
According to regulation	0	10	0

145 10 9

Agreeably to Circular Order, No. 48, unless after this decision the determination of both parties is made known to the Court, any arrangement made among themselves will not be admissible.

This award cannot be enforced after the lapse of 12 years.

On the 23rd December 1857, my signature was affixed with the Seal of the Moonsiff's Court of Nelliambalam Talook.

Date of complaint filed.....	11th Feby. 1857	} The limited time for making Appeal terminates with 27th January 1858.
Pleadings closed	2nd March "	
Points stated.	22nd April "	
Receipt of list from plaintiff.....	30th April "	
Examination of witnesses in favor of plaintiff closed	27th July "	

On the 29th December 1857, a copy of this decision was given to the plaintiff, but as the defendant was not present, it was not given to her.

(A true Copy.)

Compared by the Head Goomastta, Veerabuddia Pillay. (Signed) P. SOOBARAMANI Pillay, Moonsiff.

Nelliambalam Talook, No. 111 of 1857.

Tinnevely, Zillah Court, Appeal No. 2 of 1858.

Original Defendant.	Original Plaintiff.
Appeal Plaintiff.	Appeal Defendant.
Boodoo Beebee, daughter of Shekh Muctoom, living upon pension.	Shah Beebee, of the above country, inhabitant.
Mahomed Jamal Sahib.	

The original defendant not having brought forward anything to prove the claim to be false, the fact of the plaintiff's having in 1842, been married by nikah to the deceased Subadar Kaja Imam Sherif has not been disproved. That after his death, they both lived together and enjoyed conjointly the pension of Rupees 21 has been proved by the witnesses of the plaintiff in the 2nd Regiment. It is evident as is stated by the plaintiff, that her late husband on his proceeding on foreign service to China, granted from a fixed amount of Rupees 35, two separate family certificates at Rupees 21 and 14, the former for the maintenance of his first wife the defendant, and

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the latter for the 2nd wife the plaintiff, consequently the Court have under the tenure of the aforesaid distribution of the family payment awarded, that two-fifths of the pension Rupees 21 or Rupees 8-6-5 be paid to the plaintiff throughout her life time.

After having corrected and confirmed the decision of the lower Court, it is decreed that the defendant should pay all costs and principal.

Charges for stamped papers incurred by the Appeal defendant.....	4	0	0
Incurred by Appeal defendant on first investigation.....	8	10	0
Cost incurred by Appeal defendant to be paid by Appeal plaintiff..	12	10	0
Fee on account of Vakeel in favor of plaintiff.....	6	13	6
Charges on account of stamped papers for Appeal.....	9	0	0
Notice charges.....	0	4	0
	16	1	6

Costs incurred by Appeal plaintiff should be forfeited.

If Appeal is to be made on this decision to a superior authority, it should be made before 10th June 1858.

(True Copy.)

(Signed) E. STORY,
Civil Judge.

Minutes of evidence in support of claims preferred by nominated heirs of men of 2nd Regiment N. I., taken before a Committee, held at Palaveram on the 15th December 1845.

PRESIDENT.

Captain J. H. B. Congdon, 2nd Regiment N. I.

MEMBERS.

Captain W. G. Beagin, 2nd Regiment N. I.

Lieutenant J. F. Erskine, 2nd Regiment N. I.

The Regimental Register of Heirs and the Pension Regulations are laid before the Committee.

Claim No. 1.—Boodoo Bee appears before the Committee and claims pension as widow and nominated heir of the late Subadar Khajah Imaum Sherriffe, Regimental No. 115 of the D. Company, 2nd Regiment N. I., who died at sea on his return from foreign service in China, with the Head Quarters of his Company.

1st Witness.—Subadar Shekh Hoossain of the 2nd Regiment N. I., is called before the Committee and the warning prescribed in para. 42, Section II of Pension Regulations, is given him.

I know this claimant Boodoo Bee, she is the wife by shadee of the late Subadar Khajah Imaum Sherriffe, who died at sea on his return from foreign service in China. I was present when they were married at Palaveram about 16 years ago.

Question.—Had the deceased Subadar Khajah Imaum Sherriffe, any legitimate son?

Answer.—He had three children by his shadee wife, Boodoo Bee, but they are all dead, he had a nickah wife, but no children by her.

Signed in the Hindoostanee character Shaik Hoossain Subadar, 2nd Regt. N. I.

Jemadar Bunderrowany, 2nd Regiment N. I., is called before the Committee, and the prescribed warning is given to him.

I know this claimant Boodoo Bee to be the shadee wife of the late Subadar Khajah Imaum Sherriffe, she was a daughter of Subadar Major Shaik Muctoom of the 2nd Regiment N. I., and was married by shadee, to Subadar Khajah Imaum Sherriffe at Palaveram, about 16 years ago, when the Regiment was stationed here at that time.

Question.—Had the deceased Subadar Khajah Imaum Sherriffe any legitimate son?

Answer.—He had three children by his shadee wife, but they are all dead, he had a nickah wife, but no children by her.

The mark of + Jamadar Bunderrowany, Regtl. No. 144, 2nd Regt. N. I.

Fort St. George, Judicial Consultation, 28th September 1858.

DECISION OF THE COMMITTEE.

The Committee considers there is no doubt as to the claimant's identity, and that she is entitled to a pension as the shadee wife and nominated heir of the late Subadar Khajah Imaum Sherriffe of the D. Company, 2nd Regiment N. I., Regimental No. 115.

(Signed) J. H. B. CONGDON, Capt.,
2nd Regt. N. I. } President.
(") W. G. BEAGIN, Capt., 2nd do. } Members.
(") J. F. ERSKINE, Lieut., 2nd do. }

Subadar Shekh Moortigah, Regimental No. 7, and Jemadar Shekh Nutter, Regimental No. 52, who were both in the Company, at different periods with the late Subadar Khajah Imaum Sherriffe, Regimental No. 115, D. Company, 2nd Regiment N. I., were present during the investigation.

(Signed) J. H. B. CONGDON, Captain,
President.

(A true Copy.)

(Signed) W. G. WOODS, Lieut. Col.,
Adjutant General of the Army.

No. 10.

ORDER THEREON, No. 1297; dated 23rd September 1858.

This letter with its enclosures will be communicated to the Government Pleader in the *Sudr Udalut*, and will be brought by him to the notice of that Court, for such orders as they may see fit to pass.

(Signed) T. PYCROFT,
Chief Secretary.

Letter from Adjt. General dated 28th Aug/58.

In the above letter the Commandarin Chief brings to notice the result of a suit brought by Shah Beebe against Boodoo Beebe, ^{who are} the widow and shadee widows of the late Subadar Khajah Imaum Sherriffe of the 2^d Regt. N. I. In this case Shah Beebe claimed a portion of the pension granted by Govt. to Boodoo Beebe the nominated heir of their late husband. The Moonsiff of Kelligambalur, before whom the suit was first heard, decreed that Boodoo Beebe should pay Shah Beebe 10 1/2 Rs monthly out of the pension with arrears & the court costs. The case went up in appeal before the Jillah Court, where the Judge ~~decided~~ awarded 2/5 of the pension to Shah Beebe.

The Commandarin Chief points out that Reg. IV of 1857, removes the subject matter of such suits from the jurisdiction of civil courts, and that the Pension Rules provide that the amount of pension shall be paid

to the nominated heir only & that the distribution of it is to be provided for solely by family arrangement.

These ^{pleas} ~~points~~ do not appear to have been put in by Gooden Beebe, the recipient of the pension and nominated heir.

This is clearly a case beyond the jurisdiction of the courts, but I apprehend Govt. will not interfere, in any other way than instructing their pleader to bring the matter up in appeal before the Sudder, if practicable.

The time for appeal expired on the 10th of June last.

May this paper better be referred to the Govt. pleader for report as to the course to be pursued in this matter?

10th 10
17/9/58.

Whether the party had pleaded the Regu-
lar ^{provision} ~~provision~~ ^{of the} ~~of the~~ ^{part} ~~part ^{is} ~~is ^{not} ~~not ^{given} ~~given ^a ~~a ^{decree} ~~decree~~ ^{contrary} ~~contrary~~ ^{to} ~~to ^{the} ~~the ^{law} ~~law [&] ~~& ^I ~~I ^{suppose} ~~suppose ^{the} ~~the ^{mother} ~~mother ^{has} ~~has ^{only} ~~only ^{been} ~~been ^{seen} ~~seen ^{before} ~~before ^{the} ~~the ^{Sudder} ~~Sudder ^{of} ~~of ^{the} ~~the ^{Govt} ~~Govt ^{pleader} ~~pleader ^{to} ~~to ^{have} ~~have ^{the} ~~the ^{case} ~~case ^{set} ~~set ^{right} ~~right ^{off} ~~off~~

The decree being illegal
can not be executed.

To the Court Pleaser in
the Court of Probate
with a Family Allowance
Copy of the Order to the Agent of the Assignee

} Dated 30th